(u)

No. 87-1206

Supreme Court, U.S.
FILED
JUL 18 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

KATHRYN ISABELLA MESA, PETITIONER

v.

PEOPLE OF THE STATE OF CALIFORNIA

SHABBIR A. EBRAHIM, PETITIONER

v.

PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI
FILED: JANUARY 19, 1988
CERTIORARI GRANTED: May 23, 1988

150P

TABLE OF CONTENTS

Page

Kathryn Isabella Mesa

Relevant Docket Entries 1
Complaint 2
Petition for Removal 4
District Court Order Granting Removal 6

Shabbir A. Ebrahim

Relevant Docket Entries 7
Complaint 8
Petition for Removal 9
Magistrate's Order Granting Removal 11
District Court Order Granting Removal 12
Order Granting Certiorari 13

RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

CR 85-2149

DATE	PROCEEDING
10/04/85	Petition for removal filed
10/10/85	Motion for remand filed
10/25/85	Order of District Court granting petition for removal and denying motion for remand
11/4/85	Notice of appeal filed

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 86-1525

DATE	PROCEEDING
1/13/87	Case argued and submitted
3/26/87	Opinion filed granting writ of mandamus

MUNICIPAL COURT OF CALIFORNIA
SANTA CLARA COUNTY JUDICIAL DISTRICT
SAN JOSE FACILITY

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

VS.

KATHRYN ISABELLE MESA (3-8-59)
1725 Leeward Dr., San Jose, CA
DEFENDANT(S)

COMPLAINT

I, the undersigned, hereby certify, or, on information and belief declare:

COUNT ONE

That in the County of Santa Clara, State of California, on or about AUGUST 16, 1985, a MISDEMEANOR, to wit: a violation of CALIFORNIA PENAL CODE SECTION 192(c)(2) was committed by the above-named defendant(s), as follows, to wit: The said defendant(s) did unlawfully kill ULYSSES GALVAN, a human being, by driving a vehicle in the commission of an unlawful act and lawful act which might produce death in an unlawful manner.

COUNT TWO

That in the County of Santa Clara, State of California, on or about AUGUST 16, 1985, an INFRACTION, to wit: a violation of CALIFORNIA VEHICLE CODE SECTION 21658(a) was committed by the above-named defendant(s), as follows, to wit: The said defendant(s) did drive a vehicle, to wit: a car, on White Rd., a highway divided into two or more clearly marked lanes for traffic in one direction and did fail to drive said vehicle as nearly as practical entirely within a single lane, and did move from said lane when such movement could not be made with reasonable safety.

Complainant therefore prays that the said defendant may be dealt with according to law.

I certify under penalty of perjury that the foregoing is true and correct. Executed on SEPTEMBER 4, 1985, in Santa Clara County, California.

B.T. SMITH # 1745/L. CUTLER #1233 "T"
(Bariteau #1316)
SJPD 277-4651 #85-228-8062
MGK/D119/upc

Warrant received for service by:

____

on ________________________

Cash or Bond $____________________

____

JUDGE OF THE MUNICIPAL COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL NO. CR 85-2149

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

V.

KATHRYN ISABELLE MESA, DEFENDANT

[FILED OCT. 4, 1985]

PETITION FOR REMOVAL OF CRIMINAL ACTION

Upon direction by the Attorney General of the United States and pursuant to 28 U.S.C. §§ 1442, *et seq.*, the undersigned attorneys hereby present the following facts to the Judges of the United States District Court for the Northern District of California on behalf of federal defendant Kathryn Isabelle Mesa, a former employee of the United States Postal Service.

1. A criminal complaint was commenced on September 4, 1985, in the Municipal Court of the State of California, County of Santa Clara, San Jose Branch, bearing the above-caption and numbered 85-228-8062, charging defendant Kathryn Isabelle Mesa with violating California Penal Code, Section 192(c)(2)—vehicular manslaughter (misdemeanor) and California Vehicle Code, Section 21658(a)—driving outside laned roadway.

2. A copy of the complaint was received by defendant and is attached hereto as Exhibit "A". Defendant was arraigned on said complaint on October 2, 1985 in the Municipal Court for the State of California, County of

Santa Clara. A pretrial conference was set for November 4, 1985. No trial date has been set in the action.

3. This action is one which may properly be removed to this Court pursuant to 28 U.S.C. §§ 1442, *et seq.*, for the reason that the complaint is directed against a former federal employee, i.e., an employee of the United States Postal Service, and the state charges arose from an accident involving defendant which occurred while defendant was on duty and acting in the course and scope of her employment with the Postal Service. In particular, 28 U.S.C. § 1442(a)(1) and § 1446(c) provide for removal of such actions.

4. The action is one which may be removed to this Court without bond pursuant to 28 U.S.C. §§ 1446(d).

WHEREFORE, the undersigned petitions this Court on behalf of the former federal employee Kathryn Mesa, that the action described in paragraph 1, above, be removed in its entirety to this Court for all further proceedings.

DATED: October 4, 1985

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

ROBERT D. WARD
Chief, Criminal Division

By: /s/ JOHN A. MENDEZ
JOHN A. MENDEZ
Assistant United States Attorney

Attorneys for Federal Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL NO. CR 85-2149 RPA

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

KATHRYN ISABELLE MESA, DEFENDANT

[FILED OCT. 25, 1985]

ORDER

Good cause appearing:

IT IS ORDERED that defendant's Petition for Removal of State of California Criminal Case is hereby granted;

IT IS FURTHER ORDERED that plaintiff's Motion for Remand is hereby denied.

DATED: OCT. 25, 1985

/s/ ROBERT P. AGUILAR
ROBERT P. AGUILAR
United States District Court Judge

RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

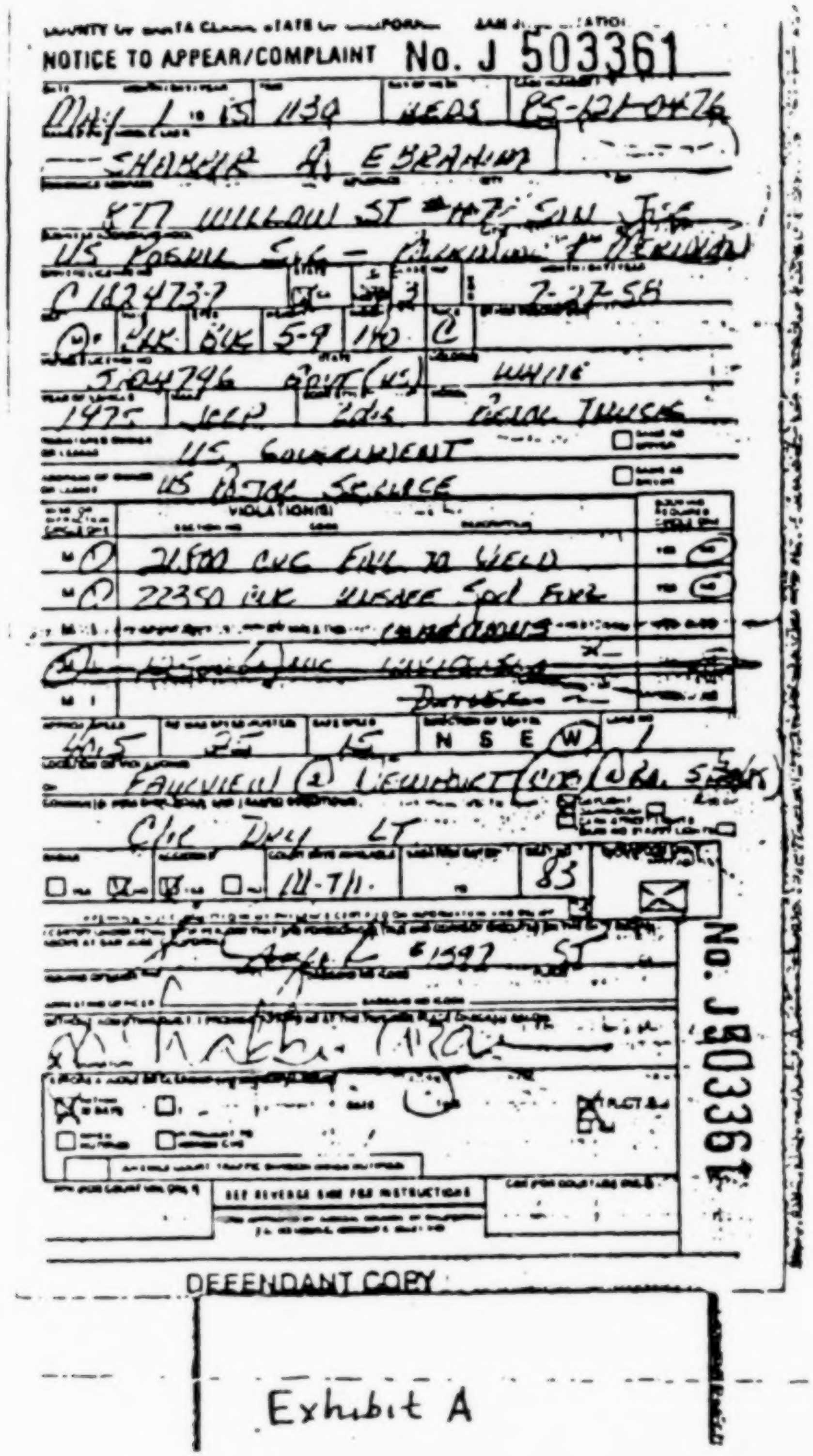
CR 85-2135

DATE	PROCEEDING
9/24/85	Petition for removal filed
10/10/85	Motion for remand filed
10/25/85	Order of magistrate granting petition for removal and denying motion for remand
11/15/85	Order of Disrtrict Court affirming ruling of magistrate
11/22/85	Notice of appeal filed

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 86-1500

DATE	PROCEEDING
1/13/87	Case argued and submitted
3/26/87	Opinion filed granting writ of mandamus



NOTICE TO APPEAR/COMPLAINT No. J 503361

May 1 '85 | 1130 | WEDS | 85-121-0476

SHABBIR A. EBRAHIM

877 WILLOW ST #47 SAN JOSE

US POSTAL SVC – [illegible]

C1124737 | 3 | 7-27-58

M | BLK | BLK | 5-9 | 140 | C

[illegible] GOVT (US) | WHITE

1975 | JEEP | 2dr | POSTAL TRUCK

US GOVERNMENT

US POSTAL SERVICE

VIOLATION(S)

1) 21800 CVC FAIL TO YIELD

2) 22350 CVC UNSAFE SPD FOR [illegible]

45 | 25 | 15 | N S E [✓ W] | 1

FAIRVIEW @ LEWISHURST [illegible]

CLR DRY LT

[illegible] | 83

No. J 503361

DEFENDANT COPY

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL NO. CR 85-2135 RPA

STATE OF CALIFORNIA, PLAINTIFF

v.

SHABBIR A. EBRAHIM, A/K/A SHABBIR AZAM, DEFENDANT

[FILED SEP. 24, 1985]

PETITION FOR REMOVAL OF CRIMINAL ACTION

Upon direction by the Attorney General of the United States and pursuant to 28 U.S.C. §§ 1442, *et seq.*, the undersigned attorneys hereby present the following facts to the Judges of the United States District Court for the Northern District of California on behalf of federal defendant Shabbir A. Ebrahim, aka Shabbir Azam, an employee of the United States Postal Service.

1. A complaint/traffic citation, No. J-50331, was issued on May 30, 1985, in the Municipal/Traffic Court of the State of California, City of San Jose, County of Santa Clara, bearing the above-caption and numbered 85-121-0476 for alleged violations of California Vehicle Code Sections 21800 (failure to yield) and 22350 (speeding).

2. A copy of the complaint/traffic citation was received by defendant and is attached hereto as Exhibit "A". This citation is the only process, pleading or order which has been received. Defendant was arraigned on this citation on September 16, 1985 in the Traffic Court. Trial has been set for November 7, 1985.

3. This action is one which may properly be removed to this Court pursuant to 28 U.S.C. §§ 1442, *et seq.*, for the reason that the complaint/traffic citation is directed against a federal employee, i.e., an employee of the United States Postal Service, and the state charges arose from an accident involving defendant which occurred while defendant was on duty. In particular, 28 U.S.C. § 1442(a)(1) and § 1446(c) provide for removal of such actions.

4. The action is one which may be removed to this Court without bond pursuant to 28 U.S.C. §§ 1446(d).

WHEREFORE, the undersigned petitions this Court on behalf of the federal employee that the action described in paragraph 1, above, be removed in its entirety to this Court for all further proceedings.

DATED: September 24, 1985

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

ROBERT D. WARD
Chief, Criminal Division

By: /s/ JOHN A. MENDEZ
JOHN A. MENDEZ
Assistant United States Attorney

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. CR-85-2135-MAG
Calif Case No. 85-121-0476

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

vs.

SHABBIR A. EBRAHIM, A/K/A SHABBIR AZAM, DEFENDANT

[FILED OCT. 31, 1985]

ORDER

Good cause appearing:

IT IS ORDERED that defendant's Petition for Removal of State of California Criminal Case is hereby granted;

IT IS FURTHER ORDERED that plaintiff's Motion for Remand is hereby denied. *Com. of Pa. vs. Newcomer*, 618 F.2d 246 (3d Cir. 1980).

DATED: 10/25/85

/s/ NORDIN F. BLACKER,
NORDIN F. BLACKER,
U.S. Magistrate

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. CR 85-2135 RPA

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

VS.

SHABBIR A. EBRAHIM, A/K/A SHABBIR AZAM, DEFENDANT

[FILED NOV. 15, 1985]

ORDER AFFIRMING MAGISTRATE'S RULING

As a federal employee who was on duty and acting within the scope of his duties at the time of his alleged violation of the California Vehicle Code, Defendant Shabbir A. Ebrahim is entitled to have his case heard in federal court pursuant to 28 U.S.C. §§ 1442 *et seq.* The ruling of the Magistrate is affirmed.

IT IS SO ORDERED.

DATED: November 15, 1985

/s/ ROBERT P. AGUILAR
ROBERT P. AGUILAR
United States District Judge

Supreme Court of the United States

No. 87-1206

KATHRYN ISABELLA MESA AND
SHABBIR A. EBRAHIM, A/K/A
SHABBIR AZAM, PETITIONERS

V.

CALIFORNIA

ORDER ALLOWING CERTIORARI. Filed May 23, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

U.S. GOVERNMENT PRINTING OFFICE 1988—202 037/60814